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**To:** Members of The House Judiciary Committee

**From:** Family & Juvenile Law Section Council (FJLSC)  
by Ilene Glickman, Esquire and Daniel Renart, Esquire

**Date:** March 4, 2021

**Subject:** **House Bill 973:**  
Family Law – Grandparent Visitation

**Position:** **OPPOSE**

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The Maryland State Bar Association (“MSBA”) Family and Juvenile Law Section (“FJLS”) **opposes House Bill 973 - Family Law - Grandparent Visitation.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

The FJLSC acknowledges and appreciates that this is an emotional and difficult issue and in certain circumstances the best interests of a child might render the granting of visitation by third parties, to include grandparents, appropriate. Current jurisprudence, including Family Law Section 9-102 as it is currently written (and interpreted by case law to require a threshold showing of parental unfitness or exceptional circumstances before applying the best interests standard) provides a means for grandparents to pursue visitation.

The Supreme Court of the United States and the Court of Appeals have recognized that biological and legal parents have a fundamental constitutional right to the care and custody of their children. Because parents have this constitutional right to raise their children free from unwarranted interference by the State, there is a substantive presumption that it is in the best interest of children to remain in the custody and care of their parents. Before a Maryland Court can consider granting access rights to any third party, including any grandparent, the Court must

make a finding of either unfitness of the parents or find that exceptional circumstances exist. HB 973 may not fully comply with these constitutional standards.

The current laws in place allow for the consideration and granting of grandparent visitation by the Court under 9-102 as written, as well as the opportunity for third parties, including grandparents, to petition the court for De Facto parenthood status in a matter involving custody of child, for custody as a third-party, or guardianship when appropriate. Therefore, the reasonable rights of a grandparent to seek access to a grandchild in Maryland are not diminished should HB 973 fail to become law.

HB 973 would in essence appear to create a special exception for a certain category of third-party grandparents, to include those whose own child, the parent of the grandchild whose visitation is at issue, is deceased, or whose own child, again the parent of the grandchild whose visitation is at issue, is a party to a divorce, annulment, custody or paternity action. The FJLSC has many concerns about the impact of such changes to 9-102, including, but not limited to, encouraging specific third parties, namely grandparents, to engage in and potentially complicate existing litigation involving the custody and access of minor children. Further, the proposed modifications set forth in HB 973 would have the effect of granting certain grandparents automatic elevated legal status in the event that a legal parent's (the adult child of the grandparent) relationship or availability to his or her minor child is impacted or severed by separation from the other legal parent or the death of said legal parent. While the death of one's adult child is certainly traumatic, and the dissolution of an adult child's relationship with his or her legal co-parent may be a traumatic event, for a grandparent, which in turn may inspire concern about his or her ongoing role in the life of a grandchild, the mere occurrence of a filing for divorce or the unfortunate death of an adult child should not have the immediate effect of creating a unique legal status for a grandparent as set forth in HB 973.

The FJLSC is, in addition, concerned about the inclusion of language in HB 973 regarding "interference with the parent-child relationship." The act of a grandparent filing a petition for visitation with a grandchild, either within a divorce or other court action concerning access to a child pending between that child's legal parents, or against the surviving parent of the child after his or her adult child has passed away, is in its very essence interference in the parental-child relationship, in that the need to so file is undoubtedly predicated on at least one legal parent's failure, in the opinion of the grandparent-filer, to permit sufficient access by the grandparent to the grandchild. Without additional parameters as to what the Court might consider "interference", the language of the statute creates more confusion than is necessary when 9-102, as it is currently in effect, permits the court to simply consider reasonable requests for grandparent visitation in the best interests of the child, which is the standard by which nearly every determination by a Maryland Court is based when determining custody and/or access to children.

The FJLSC, finally, raises significant concern regarding the proposed language in HB 973 (Line 20) which mandates (see line 20) that a Court "shall grant visitation rights to a grandparent

under this section if, in part, "the child has lived with the grandparent for a period of at least 12 months" subject to a finding that said access is in the best interest of the child and would not interfere with the parent-child relationship. A grandparent is, under Maryland Law, a third party. To include language which requires a Court to grant access to a child in 9-102 would curtail a Judge's discretion to determine, ultimately, the best interests of certain children, based solely on their prior involvement with a grandparent. The proposed language only requires cohabitation for a period of 12 months, but does not clarify whether that is subject to the acquiescence of any legal parent, whether the cohabitation is recent or occurred a decade ago, whether the cohabitation is required to be 12 consecutive months or any combination of months over a child's lifetime that amount to 12 total months. Further, referencing again the fundamental constitutional rights of biological and legal parents to determine the care and custody of their children, creating a mandate that certain categories of third parties, namely grandparents who have co-habitated with a minor child for some unspecified period of 12 months, "shall" be granted access under any circumstances is inherently unconstitutional.

The FJLSC supports the concept of legislation which addresses the rights of third parties to seek and obtain custody and/or access which is not limited to a special class of "grandparents" and instead is expanded to include any third parties who meet certain specified criteria, such as de facto parents in accordance with the four-pronged test set forth in Conover v. Conover, 450 Md. 51 (2016). The FJLSC is available to assist with same. The proposed changes to 9-102 as set forth in HB 973 are focused too narrowly on certain grandparents to the exclusion of broader categories of third parties that may or should potentially have certain rights with regard to access to children which could be defined by statute but are not at the present time.

The FJLSC urges the House Judiciary Committee, for the reasons stated above, to issue an unfavorable report on HB 973.

Should you have any questions, please contact Rebecca A. Fleming, Esquire by telephone at 410-339-4100 or by e-mail at [rfeleming@tnsfamilylaw.com](mailto:rfeleming@tnsfamilylaw.com) or Ilene Glickman by telephone at (410) 821-8718 or by e-mail at [ilene@lawhj.com](mailto:ilene@lawhj.com).